

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF VIRGINIA  
LYNCHBURG DIVISION**

FREIGHTCAR AMERICA, INC.,  
a Delaware Corporation,

Plaintiff,

V.

Case No. 6:21-cv-00027-NKM

DAVIS-FROST, INC.,  
a Minnesota Corporation,

Defendant.

**JOINT RULE 26(f) REPORT**

Pursuant to the Federal Rules of Civil Procedure and this Court's May 7, 2021 Order, the parties jointly submit this Joint Rule 26(f) Report.

1. Date and Place of the Meeting; Identification of the Parties and Their Attorneys;  
Agenda of Matters for Pretrial Conference

a. The date and place at which the meeting was held;

**A conference was held between representatives for the parties on May 13, 2021, via zoom conference.**

b. Name, address and occupation or business of each party, together with the name, address, telephone number, and e-mail address of the attorneys who represented each party at the meeting;

**Plaintiff:**

**FreightCar America, Inc.**  
**125 S. Wacker Drive**  
**Suite 1500**  
**Chicago, IL 60606**

**Nancy Anne Temple**  
**Katten & Temple, LLP**  
**209 S. LaSalle Street**  
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**Chicago, IL 60604**  
[ntemple@kattentemple.com](mailto:ntemple@kattentemple.com)

**Defendant:**

**Davis-Frost, Inc.**  
**3416 Candler's Mountain Road**  
**Lynchburg, VA 24506**

**Charles K. Maier (PHV – MN Atty. #230315)**  
**LATHROP GPM LLP**  
**500 IDS Center**  
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- c. Name of insurance carriers that may be liable for the defense or payment of any damage award; and

**Plaintiff: N/A**

**Defendant: Chubb North American Claims on behalf of Illinois Union Insurance Company.**

- d. An agenda of matters to be discussed at the Pretrial Conference.

**Topics addressed in this Joint Report.**

2. Description of the case.

- a. A concise statement of the jurisdictional basis of the case, giving statutory citation and a brief narrative description;

**This court has jurisdiction pursuant to 28 U.S.C. §1332(a)(1) in that there is complete diversity of citizenship and the amount in controversy exceeds the sum of \$75,000 exclusive of jurisdiction and costs.**

- b. In diversity cases in which a limited liability corporation or partnership entity is a named party, the concise statement shall contain a brief description of the availability of diversity jurisdiction, including a list of all members and the citizenship of each member of the limited liability corporation or a list of all partners and the citizenship of all partners of the partnership entity, consistent with the Federal Rules of Civil Procedure and the Local Rules;

**Plaintiff FreightCar America, Inc. is a Delaware corporation with its principal place of business in Illinois.**

**Defendant Davis-Frost, Inc. is a Minnesota corporation with its principal place of business in Virginia.**

- c. A brief narrative of the facts giving rise to the lawsuit, including a description of legal claims and defenses; and

**Plaintiff purchased industrial paint from Defendant and applied the paint to steel railcars. Plaintiff asserts that the industrial paint was defective and blistered after being applied to the railcars. Defendant provided Plaintiff with a Warranty that guaranteed the paint for up to ten years. Plaintiff alleges that Defendant breached the terms and conditions of the parties' purchase order, breached the implied warranty of fitness for a particular purpose, breached the implied warranty of merchantability, and breached the Warranty. Plaintiff claims that Defendant knew that the paint failed to adhere to other railcars due to its defective formula and thus violated the Illinois Consumer Fraud and Deceptive Business Practices Act.**

**Defendant denies that the paint it sold to Plaintiff is defective in any way. Defendant also denies that it breached the terms of the parties' Purchase Order and the parties' Warranty. Defendant asserts that Plaintiff misapplied the paint which resulted in the alleged blistering.**

- d. A summary itemization of the dollar amount of each element of the alleged damages.

**Plaintiff has incurred over \$3 million to investigate and repair the 300 railcars.**

3. Pleadings.

- a. A statement of whether the Complaint and all responsive pleadings have been filed, and whether any party proposes to amend its pleadings;

**Plaintiff has filed a Complaint. Defendant has filed an Answer to the Complaint. The parties do not anticipate the need for amendment of pleadings but reserve the right to do so if necessary.**

- b. The date by which all motions that seek to amend the pleadings or add parties will be filed; and

**August 21, 2021.**

- c. Whether a jury trial is available under the law, and whether a jury trial has been timely demanded.

**A jury trial has not been demanded by either party.**

4. Discovery Plan.

The parties recommend that the Court establish the following discovery deadlines and limitations:

- a. The date by which the initial Rule 26(a)(1) disclosures of witnesses, documents, itemized damage computations and insurance will be completed;

**June 7, 2021.**

- b. Whether discovery should be conducted in phases, or limited to or focused upon, particular issues;

**Discovery will not be conducted in phases.**

- c. The date by which each party shall disclose the identity of expert witnesses and their reports under Rule 26(a)(2)(A) and (B);

**Plaintiff's Expert Disclosure and Report: November 1, 2021.**

**Responsive Expert Disclosure and Report: December 1, 2021.**

- d. The number of interrogatories each party shall be permitted to serve;

**Number of Interrogatories consistent with the limitations set forth in the Federal Rules of Civil Procedure.**

- e. The number of depositions (excluding depositions of expert witnesses) each party shall be permitted to take;

**At this time, the number of depositions is expected to be consistent with the limitations set forth in the Federal Rules of Civil Procedure.**

f. The number of expert depositions each party shall be permitted to take; and

**It is anticipated that parties may have 2 experts each and it is anticipated that all experts will be available for deposition.**

g. A mechanism and date by which the parties shall meet, confer, and stipulate to search terms and any other unique electronic discovery issues, as appropriate.

**The parties will meet via telephone or zoom conference to address search terms and electronic discovery issues, if appropriate, by June 22, 2021.**

5. Close of Discovery and Non-Dispositive Motions

a. The date by which all discovery shall be completed and all non-dispositive motions shall be filed and served.

**Close of both fact and expert Discovery: January 31, 2022.**

**All non-dispositive motions shall be filed and served by January 31, 2022.**

6. Dispositive Motions and Trial

a. The date by which all dispositive motions shall be served and filed:

**February 15, 2022. The parties shall follow the following briefing schedule.**

**Opposition brief is due within 28 days of opening brief**

**Reply brief is due 14 days after service and filing of the opposition brief.**

b. The date by which the case shall be ready for trial;

**June 13, 2022.**

c. The number of experts witnesses each party expects to call at trial;

**Plaintiff: Two; Plaintiff reserves the right to amend to include additional experts.**

**Defendant: Two; Defendant reserves the right to amend to include additional experts.**

d. Estimated trial time (including jury selection and instructions, if applicable).

**The parties anticipate 7-10 days for a trial.**

7. Consent to Magistrate Judge.

**The parties do not consent to this case proceeding before a Magistrate Judge.**

Dated: May 17, 2021

Respectfully submitted,

**FISHWICK & ASSOCIATES, PLC**

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**ATTORNEYS FOR PLAINTIFFS**

